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19 November 1987

NOTE FOR: The Director
FROM: Dave Gries
SUBJECT: Testimony Before Senate Intelligence Committee
on New Oversight Legislation

STAT

Attached is a final version of the statement that you will present in tomorrow's Senate Intelligence Committee hearing on new oversight legislation. Only the minor changes agreed to at this morning's prebriefing have been made to the statement. Copies of the statement have been sent to the Senate Intelligence Committee.

As you requested, we have also attached the definition of special activities as contained in Executive Order 12333.

Attachments
as stated

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STATEMENT OF THE
DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE THE SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

NOVEMBER 20, 1987

MR. CHAIRMAN AND MEMBERS OF THE SELECT COMMITTEE ON INTELLIGENCE, I AM PLEASED TO BE HERE TODAY TO SHARE SOME OF MY THOUGHTS ON S. 1721, THE INTELLIGENCE OVERSIGHT ACT OF 1987. THE VIEWS EXPRESSED IN THIS STATEMENT ALSO REFLECT THE POSITION OF THE ADMINISTRATION. I UNDERSTAND THE COMMITTEE WILL ALSO RECEIVE TESTIMONY FROM REPRESENTATIVES OF THE DEPARTMENT OF JUSTICE ON THE CONSTITUTIONALITY OF THE BILL. I THEREFORE WILL CONFINE MY REMARKS TO THE OVERALL NEED FOR LEGISLATION IN THIS AREA AND THE PRACTICAL IMPACT OF THE BILL ON THE INTELLIGENCE COMMUNITY.

SPEAKING ON BEHALF OF THE ADMINISTRATION, I WANT TO MAKE THE FOLLOWING POINTS AT THE OUTSET:

- THE ADMINISTRATION IS DETERMINED TO MAINTAIN AN EFFECTIVE, ROBUST NATIONAL INTELLIGENCE CAPABILITY. THE PRESIDENT HAS APPRECIATED THE SUPPORT OF CONGRESS SINCE 1981 IN THE JOINT EFFORT TO IMPROVE OUR INTELLIGENCE CAPABILITY. THIS COOPERATIVE EFFORT HAS BENEFITED THE NATION'S SECURITY AND HAS REFLECTED A CONSENSUS AMONG THE EXECUTIVE AND LEGISLATIVE BRANCHES THAT EFFECTIVE INTELLIGENCE IS VITAL TO THE NATION'S SECURITY.

- NO LESS IMPORTANT THAN OUR INTELLIGENCE CAPABILITY IS EFFECTIVE MANAGEMENT AND CONDUCT OF INTELLIGENCE OPERATIONS. THE SUPPORT OF THE NATION FOR THE WAY THE INTELLIGENCE

COMMUNITY CONDUCTS ITS ACTIVITIES IS ESSENTIAL TO ACHIEVING THIS GOAL. COOPERATION BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES TO ASSURE SUCH SUPPORT IS INDISPENSABLE, AND THE ADMINISTRATION AND I, AS DCI, ARE COMMITTED TO ENSURING THAT CONGRESS RECEIVES ALL THE INFORMATION IT NEEDS TO DISCHARGE ITS RESPONSIBILITIES IN THE INTELLIGENCE AREA.

- IF ONE PUTS ASIDE FOR THE MOMENT THE IRAN/CONTRA MATTER, I BELIEVE OUR RECORD OVER RECENT YEARS OF KEEPING CONGRESS INFORMED IS A STRONG ONE. WE HAVE PROVIDED A LARGE NUMBER OF BRIEFINGS TO THE INTELLIGENCE COMMITTEES ON SPECIAL ACTIVITIES AND WE HAVE BEEN SUBJECT TO AN EXHAUSTIVE BUDGETARY REVIEW THAT PROVIDES THE OPPORTUNITY FOR CONGRESS ANNUALLY TO EXAMINE THE ENTIRE RANGE OF INTELLIGENCE PROGRAMS.

- THE ADMINISTRATION'S FUNDAMENTAL APPROACH TO S. 1721 IS BASED ON THE BELIEF THAT THE RELATIONSHIP BETWEEN CONGRESS AND THE EXECUTIVE BRANCH ON INTELLIGENCE ACTIVITIES MUST REMAIN IN A BALANCE. THAT BALANCE MUST PERMIT CONGRESS TO DISCHARGE ITS RESPONSIBILITIES WHILE ALLOWING THE EXECUTIVE BRANCH TO MAINTAIN THE NECESSARY FLEXIBILITY AND AUTHORITY TO CONDUCT INTELLIGENCE ACTIVITIES EFFECTIVELY. THE ADMINISTRATION OPPOSES S. 1721 BECAUSE IT BELIEVES THAT THE PROPOSED LEGISLATION WILL DISRUPT THAT BALANCE BY UNDERMINING THE ABILITY OF THE PRESIDENT AND MEMBERS OF THE EXECUTIVE BRANCH CHARGED WITH THE CONDUCT OF INTELLIGENCE ACTIVITIES AND THE PROTECTION OF THE NATION'S CAPABILITY, TO DISCHARGE THESE RESPONSIBILITIES.

HAVING MADE THESE OBSERVATIONS, I WILL CERTAINLY ACKNOWLEDGE THE OBVIOUS: THE EVENTS SURROUNDING THE IRAN/CONTRA MATTER HAVE LED TO CONCERN AMONG MEMBERS OF CONGRESS REGARDING THE ADEQUACY OF CONGRESS' ABILITY TO DISCHARGE ITS RESPONSIBILITIES WITH REGARD TO SPECIAL ACTIVITIES. AS YOU KNOW, THE PRESIDENT RECOGNIZED LAST SPRING THAT THERE WAS ROOM FOR IMPROVEMENT IN THE PROCESS BY WHICH THE TWO BRANCHES WERE MEETING THEIR RESPONSIBILITIES, AND HE TOOK SUBSTANTIAL STEPS IN CONSULTATION WITH THIS COMMITTEE, TO ESTABLISH IMPROVED PROCEDURES TO ENSURE THAT THE CONGRESS CAN PLAY ITS APPROPRIATE ROLE. THESE NEW PROCEDURES IN THE FORM OF A NEW NATIONAL SECURITY DECISION DIRECTIVE ON SPECIAL ACTIVITIES (NSDD 28C), CLARIFY THE RULES BY WHICH SPECIAL ACTIVITIES ARE REVIEWED, APPROVED, AND REPORTED TO CONGRESS. AS A RESULT, BECAUSE MANY OF THE PROCEDURES WERE DEVELOPED IN CLOSE CONSULTATION WITH THIS COMMITTEE, MANY OF THE PROPOSALS CONTAINED IN S. 1721 ARE ALREADY IN EFFECT. THIS CAN BE ILLUSTRATED BY MAKING A FEW SIMPLE COMPARISONS BETWEEN THE BILL AND THE PRESIDENTIAL DIRECTIVE.

--THE BILL REQUIRES THAT FINDINGS BE IN WRITING, CANNOT BE MADE RETROACTIVE, AND MUST BE CONSISTENT WITH EXISTING LAW. SIMILAR REQUIREMENTS ARE CONTAINED IN THE NSDD.

--THE BILL MAKES CLEAR THAT A PRESIDENTIAL FINDING MUST BE OBTAINED BEFORE ANY AGENCY OR DEPARTMENT CAN CONDUCT A SPECIAL ACTIVITY. THE PRESIDENTIAL DIRECTIVE AFFIRMS THIS PRINCIPLE.

--THE BILL REQUIRES THAT THE FINDING SPECIFY BY NAME OTHER GOVERNMENT AGENCIES, PRIVATE PARTIES, OR FOREIGN GOVERNMENTS THAT ARE PARTICIPATING IN THE SPECIAL ACTIVITY. THE PRESIDENTIAL DIRECTIVE ADDRESSES THIS SAME ISSUE BY REQUIRING THAT THE STATEMENT ACCOMPANYING THE FINDING SPECIFY: OTHER EXECUTIVE DEPARTMENTS OR AGENCIES THAT PARTICIPATE SIGNIFICANTLY IN THE CONDUCT OF THE SPECIAL ACTIVITY, WHETHER IT IS ANTICIPATED THAT FOREIGN GOVERNMENTS WILL PARTICIPATE SIGNIFICANTLY IN THE SPECIAL ACTIVITY, AND WHETHER IT IS ANTICIPATED THAT PRIVATE PARTIES OR ORGANIZATIONS WILL BE INSTRUMENTAL IN THE CONDUCT OF THE SPECIAL ACTIVITY.

WHILE A PRESIDENTIAL DIRECTIVE IS NOT THE SAME AS LEGISLATION, I AM PERSUADED THAT NEW LEGISLATION AT THIS TIME IS NOT THE BEST WAY TO ADDRESS THE CONCERNS THAT MEMBERS HAVE WITH THE CONGRESSIONAL ROLE REGARDING SPECIAL ACTIVITIES. I AM NOT CONVINCED THAT THERE IS ANY BASIC DEFICIENCY IN THE OVERSIGHT PROCESS THAT NEEDS TO BE REMEDIED BY STATUTE. OVERALL, THE INTELLIGENCE COMMITTEES HAVE BEEN KEPT FULLY AND CURRENTLY INFORMED ABOUT CIA'S ACTIVITIES IN A WAY THAT BALANCES THE CONGRESSIONAL OVERSIGHT FUNCTION WITH THE NEED TO PRESERVE ESSENTIAL SECRECY AND FLEXIBILITY OF OPERATIONS. I WOULD RESPECTFULLY SUGGEST THAT BEFORE THERE ARE ATTEMPTS TO ALTER THIS BALANCE PERMANENTLY BY LEGISLATION, THE EXECUTIVE BRANCH, INCLUDING THE INTELLIGENCE COMMUNITY, SHOULD BE GIVEN AN OPPORTUNITY TO DEMONSTRATE THAT THE SYSTEM UNDER THE NEW PRESIDENTIAL DIRECTIVE CAN WORK EFFECTIVELY AND WITH APPROPRIATE REGARD FOR THE INTELLIGENCE OVERSIGHT RESPONSIBILITIES OF THE CONGRESS.

APART FROM THE QUESTION OF WHETHER THERE IS ANY REAL NECESSITY TO ENACT LEGISLATION, I HAVE SERIOUS RESERVATIONS ABOUT CERTAIN SUBSTANTIVE PROVISIONS OF THE BILL. MY FIRST CONCERN IS WITH THE PROVISION OF THE BILL THAT REQUIRES NOTIFICATION OF A SPECIAL ACTIVITY TO CONGRESS, WITHOUT EXCEPTION, WITHIN 48 HOURS AFTER THE SIGNING OF A FINDING. I BELIEVE THAT SOME ALLOWANCE MUST BE MADE FOR THAT RARE CASE WHERE A LIMITED DELAY IN CONGRESSIONAL NOTIFICATION IS CRITICAL TO PRESERVE THE ABSOLUTE SECURITY OF AN OPERATION WHEN, FOR EXAMPLE, LIVES ARE AT STAKE. FURTHERMORE, IT IS WORTHWHILE TO NOTE THAT ANY CONCERNS ABOUT EXCESSIVE DELAY IN CONGRESSIONAL NOTIFICATION OF A SPECIAL ACTIVITY HAVE ALREADY BEEN ADDRESSED BY NSDD 286. THAT DIRECTIVE REQUIRES THE NATIONAL SECURITY PLANNING GROUP TO REEVALUATE AT LEAST EVERY 10 DAYS A DECISION TO DELAY CONGRESSIONAL NOTIFICATION OF A GIVEN FINDING. THIS WILL ENSURE THAT WHERE A DELAY IN NOTIFICATION IS DEEMED NECESSARY, THE RATIONALE FOR THAT DECISION WILL BE CONTINUALLY REASSESSED TO ENSURE THAT THE DELAY WILL BE KEPT TO THE ABSOLUTE MINIMUM LENGTH OF TIME.

WITH RESPECT TO SPECIAL ACTIVITIES, THE BILL ALSO RETREATS FROM THE PRINCIPLE EXPRESSED IN SECTION 501(A) OF THE NATIONAL SECURITY ACT THAT REPORTS TO CONGRESS ON INTELLIGENCE ACTIVITIES SHALL BE MADE WITH DUE REGARD FOR THE PROTECTION OF CLASSIFIED INFORMATION AND INFORMATION RELATING TO INTELLIGENCE SOURCES AND METHODS. AS YOU ARE AWARE, I AM COMMITTED TO WORKING CLOSELY WITH THE OVERSIGHT COMMITTEES TO ENSURE THEY ARE KEPT INFORMED ON CIA SPECIAL ACTIVITIES. HOWEVER, THERE ARE SOUND AND OBVIOUS

REASONS NOT TO FURNISH THE NAMES OF AGENTS OR SOURCES PARTICIPATING IN A SPECIAL ACTIVITY OR OTHER SENSITIVE DETAILS OF OPERATIONS. I APPRECIATE YOUR ASSURANCE THAT IT IS NOT YOUR INTENTION TO SEEK THIS TYPE OF INFORMATION ROUTINELY. HOWEVER, THE BILL AS DRAFTED APPEARS TO OFFER NO SUCH ASSURANCE. OUR AGENTS AND COUNTERPARTS ABROAD WOULD, IN MY VIEW, READ THIS BILL AS COMPELLING THE ROUTINE DISCLOSURE OF THEIR IDENTITIES AND OTHER SENSITIVE INFORMATION THAT IN THE PAST THE INTELLIGENCE COMMITTEES HAVE AGREED IS NOT NECESSARY TO EFFECTIVE OVERSIGHT OF INTELLIGENCE ACTIVITIES. THE NEW LAW COULD THUS JEOPARDIZE OUR RELATIONS WITH ALLIES AND FRIENDLY SERVICES, UNDERMINE THE CONFIDENCE OF OUR HUMAN SOURCES, AND DISCOURAGE OTHERS FROM COOPERATING WITH CIA OUT OF CONCERN THAT OUR INTELLIGENCE SERVICE CAN NO LONGER EXERCISE CONTROL OVER KNOWLEDGE ABOUT THE ROLE THEY PLAY IN SUPPORT OF THE UNITED STATES AND THAT THEIR IDENTITIES WILL INEVITABLY BE WIDELY DISSEMINATED AND THEREBY COMPROMISED.

I HAVE SIMILAR CONCERNS WITH THE BILL'S REQUIREMENT THAT THE FINDING SPECIFY THE NAMES OF PRIVATE PARTIES OR FOREIGN LIAISON SERVICES THAT ARE ASSISTING THE AGENCY IN THE SPECIAL ACTIVITY. LIAISON SERVICES IN PARTICULAR, FOR WHOLLY LEGITIMATE AND UNDERSTANDABLE REASONS, HAVE REPEATEDLY STRESSED TO US THE NECESSITY OF MAINTAINING THE CONFIDENTIALITY OF THEIR ASSISTANCE IN THESE ACTIVITIES. I BELIEVE THAT THE NEW NSDD ADDRESSES THE UNDERLYING CONGRESSIONAL CONCERNS IN THIS AREA BY PROVIDING THAT THE COMMITTEE WILL BE NOTIFIED OF THE EXISTENCE AND NATURE OF THIRD PARTY INVOLVEMENT IN A SPECIAL ACTIVITY WHILE THE IDENTITIES OF SUCH PARTIES ARE PROTECTED WHERE NECESSARY.

THE PROVISION OF THE BILL REQUIRING THAT THE PRESIDENT ORDINARILY CONSULT WITH THE OVERSIGHT COMMITTEES PRIOR TO THE INITIATION OF ALL INTELLIGENCE ACTIVITIES, NOT LIMITED TO SPECIAL ACTIVITIES, ALSO IS POTENTIALLY TROUBLESOME. IN HIS LETTER OF 7 AUGUST 1987 TO THE COMMITTEE, THE PRESIDENT RECOGNIZED THE BENEFITS OF INCREASED COOPERATION ON INTELLIGENCE ACTIVITIES BY CONSULTING IN ADVANCE ON IMPORTANT DECISIONS AFFECTING OUR NATIONAL SECURITY. IN MY VIEW, CONSULTATION SHOULD BE UNDERTAKEN IN A SPIRIT OF COOPERATION AND MUTUAL UNDERSTANDING OF OUR RESPONSIBILITIES, RATHER THAN MANDATED THROUGH LEGISLATION.

THE BILL ALSO REQUIRES THAT A FINDING BE OBTAINED BEFORE FUNDS APPROPRIATED FOR, OR OTHERWISE AVAILABLE TO, ANY AGENCY OF THE UNITED STATES GOVERNMENT MAY BE EXPENDED, OR MAY BE DIRECTED TO BE EXPENDED, FOR ANY SPECIAL ACTIVITY. THE USE OF THE PHRASE "OTHERWISE AVAILABLE" IS MEANT TO COVER NON-APPROPRIATED FUNDS THAT ARE USED TO FINANCE A SPECIAL ACTIVITY. THIS WOULD INCLUDE FUNDS DONATED BY A FOREIGN COUNTRY. WE WOULD NOT OBJECT TO REQUIRING A FINDING IF A FOREIGN COUNTRY DONATED FUNDS DIRECTLY TO CIA AND WE THEN SPENT THOSE FUNDS TO FINANCE A SPECIAL ACTIVITY. HOWEVER, THE BILL WOULD ALSO COVER SITUATIONS WHERE CIA "DIRECTS" THE EXPENDITURE OF FUNDS EVEN THOUGH THE AGENCY NEVER CAME INTO POSSESSION OF THE FUNDS. WE WOULD HAVE SERIOUS CONCERNS IF THIS PROVISION IS INTENDED TO REQUIRE A FINDING IN SITUATIONS WHERE A REQUEST IS MADE TO A COUNTRY TO EXPEND FUNDS FOR A GIVEN ACTIVITY WHERE WE DO NOT CONTROL THE IMPLEMENTATION OF THE PARTICULAR ACTIVITY. TO REQUIRE A FINDING IN THESE

CIRCUMSTANCES WOULD MEAN THAT THE REQUESTING AGENCY WOULD HAVE TO ENSURE THAT THE ACTIVITIES UNDERTAKEN BY THE FOREIGN COUNTRY REMAINED WITHIN THE SCOPE OF THE FINDING. THIS WOULD IMPROPERLY MAKE THE UNITED STATES GOVERNMENT RESPONSIBLE FOR THE INDEPENDENT CONDUCT OF A SOVEREIGN NATION, AND WOULD PLACE UNREASONABLE DEMANDS ON THE AGENCY IF MERE SOLICITATION OF SUPPORT FOR SOME THIRD PARTY WERE TO LEAD TO EXPECTATIONS THAT CIA WOULD OR COULD BE RESPONSIBLE FOR THE FOREIGN COUNTRY'S SUPPORT.

THERE ALSO ARE SEVERAL OTHER PROVISIONS IN THE BILL THAT, WHILE NOT AS WORRISOME AS THE ONES I HAVE TOUCHED ON, NONETHELESS WOULD POSE PROBLEMS IN THEIR CURRENT FORM. MY STAFF IS AVAILABLE TO DISCUSS WITH COMMITTEE STAFF THE CONCERNS WE HAVE WITH THESE PROVISIONS.

IN CLOSING, I WOULD LIKE TO REEMPHASIZE TO EACH OF YOU MY PERSONAL COMMITMENT TO MAKING THE OVERSIGHT PROCESS WORK. IT HAS ALWAYS BEEN CLEAR, AND RECENT EXPERIENCE HAS DEMONSTRATED ONCE AGAIN, THAT THE IMPLEMENTATION OF THE FOREIGN POLICY OF OUR GOVERNMENT, INCLUDING SPECIAL ACTIVITIES, CAN ONLY BE SUCCESSFUL WHEN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT WORK TOGETHER IN AN ATMOSPHERE OF MUTUAL RESPECT AND TRUST. THIS SPIRIT OF COOPERATION CAN ONLY OCCUR IF THE INTELLIGENCE COMMITTEES RECEIVE THE APPROPRIATE INFORMATION NEEDED TO REVIEW AND MAKE INFORMED JUDGMENTS ON SPECIAL ACTIVITIES, WHILE AT THE SAME TIME ENSURING THAT THIS INFORMATION IS PROTECTED FROM UNAUTHORIZED DISCLOSURE. RECENT EVENTS HAVE RAISED QUESTIONS

ABOUT WHETHER THE OVERSIGHT SYSTEM IS WORKING PROPERLY. CLEARLY, NO SYSTEM THAT ATTEMPTS TO BALANCE THE NATURAL TENSION BETWEEN THE DESIRE FOR SECRECY AND THE NEED TO INFORM CONGRESS ON SPECIAL ACTIVITIES WILL EVER BE PERFECT. AS I HAVE NOTED, THE PRESIDENT HAS TAKEN CORRECTIVE STEPS TO IMPROVE THE OVERSIGHT SYSTEM THROUGH A PRESIDENTIAL DIRECTIVE. I HAVE ALSO DIRECTED A COMPREHENSIVE REVIEW OF CIA'S PERFORMANCE IN THE IRAN/CONTRA MATTER IN ORDER TO HELP ME DETERMINE WHAT CORRECTIVE STEPS, IF ANY, ARE NEEDED. IN SHORT, SIGNIFICANT CHANGES HAVE BEEN MADE, AND MORE WILL BE MADE; I WOULD RESPECTFULLY SUBMIT THAT THEY SHOULD BE GIVEN A CHANCE TO WORK. I AM CONVINCED THAT THE CURRENT FRAMEWORK, AND NOT NEW LAWS, REPRESENTS THE MOST APPROPRIATE AND EFFECTIVE MEANS TO ACHIEVE OUR SHARED COMMITMENT TO HAVE CONGRESS PLAY AN ACTIVE, EFFECTIVE ROLE IN THE OVERSIGHT OF UNITED STATES INTELLIGENCE ACTIVITIES.

THIS CONCLUDES MY STATEMENT. I AM PREPARED TO ANSWER WHATEVER QUESTIONS YOU MAY HAVE ON OUR POSITION ON THIS BILL.

Executive Order 12333 of December 4, 1981

UNITED STATES INTELLIGENCE ACTIVITIES

[3 C.F.R. 1981 Comp., p. 200, December 4, 1981, 50 U.S.C.A. 403 Note]

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5 October 1982

(1) The programs of the CIA.

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded.

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities.

(4) Activities of the staff elements of the Director of Central Intelligence.

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(b) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(c) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 *Purpose and Effect.* This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 *Revocation.* Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities" is hereby

Ronald Reagan

THE WHITE HOUSE
December 2, 1981.

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19 February 1982